

REMARKS

Claims 1, 4-15, 19-27, 29-45 are presented for the Examiner's review and consideration. In this response, claims 1, 15, 26, 29 and 32-34 have been amended, claims 37-45 have been added, and claim 28 has been cancelled. Applicant believes the claim amendments and the accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

Claim Amendments

Claims 1 and 26 have been amended to remove the term "through an incision size substantially less wide than the longest width of bone to be cut". Patentability should not be affected, as incision size was already adequately defined within the claims.

Claim 1 is further amended to remove a requirement of a particular order of steps, and the remainder of the clause beginning with "bone *may*", neither element being deemed necessary for patentability of the claim.

Claims 37 is added herein, to further clarify the invention, and includes the elements of amended claim 1, and adds "aligning the cutting guide member using references derived independently from an intramedullary device", supported in the specification, for example, at ¶[0232] et seq., ¶[0268] et seq., and ¶[0479] et seq.

Claims 38-44 are added to further define the invention. Support for these claims may be found in the specification, at least, as follows:

38: Fig. 34, ¶[0232] and ¶[0262] et seq.;

39: Fig. 32, ¶[0018], ¶[0119], ¶[0250] et seq., ¶[0521];

40-42: Fig. 39, ¶[0022]; ¶[0301] et seq.;

43: Fig. 28, ¶[0170] et seq., ¶[0196] et seq.; and

44: ¶[0480], ¶[0491].

New claim 45 presents objected to but allowable claim 1, amended only to correct the §112 issue, described below.

35 U.S.C. §112 Rejection

Claims 1 and 4-14 were rejected under 35 U.S.C. §112 second paragraph, for insufficient antecedent basis for the limitation “the cutting tool” in claim 1. Accordingly, claim 1 has been amended in response to the rejection to recite “a cutting tool” on line 6, which additionally corrects the recitations of “the cutting tool” on lines 8 and 12.

In light of the foregoing, Applicant requests reconsideration and withdrawal of the section 112 rejection.

Allowable Subject Matter

Applicant acknowledges with appreciation that claims 15 and 19-36 were allowed, and that claims 1 and 4-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. §112 2nd paragraph.

Applicant respectfully submits that the rejection under section 112 has been addressed, above, and therefore requests allowance of claims 1, 4-14, and corresponding new claim 45, as well.

Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested.

If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

Fees of \$440 for two additional independent claims, \$468 for 9 additional claims, and \$490 for a two month extension, are believed to be due. However, please charge any required fee (or credit overpayments) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 780-A04-012-1A).

Respectfully submitted,

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